IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 268 of 2000.

Date of Decision: 27-7-2007.

State of H P. Appellant.

Versus

Raj Kumar. Respondents.

Coram

Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]? No.

For the appellant : Sh.V K Verma, Additional Advocate General.

For respondent : Shri Sanjeev Kuthiala, Advocate.

Surinder Singh, J . (oral)

The respondent was sent up for trial before the Additional Chief Judicial Magistrate in Criminal Case No. 259-11-96 under Sections 279, 337 and 338 of the Indian Penal Code. Vide a detailed judgment dated 8-11-1999, the respondent was acquitted.

Feeling aggrieved by and dis-satisfied with the impugned judgment, the State filed the instant appeal on the ground that the learned trial Court did not appreciate the evidence on record in right manner which has resulted in miscarriage of justice. Leave to appeal was granted by this Court on 1.6.2000. Now the matter has been finally heard.

Initially the story of the prosecution in short has been that a Jeep bearing registration No. HP-20-4847 was being driven by the respondent on 9.10.1995. It was coming from Una side when it reached near Bangana, at about 9.45 a.m, while crossing the road, a school boy Amarjit Singh (11 years) came in contact with the jeep and sustained

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[1] Whether reporters of the Local papers are allowed to see the judgment? Yes.

grievous injuries. Jaishi Ram (PW) who was standing near by at a distance of about 40 feet witnessed the accident and he informed the Police. His statement was recorded under Section 154 of the Code of Criminal Procedure on the basis of which FIR No. 92 of 1995 was formally registered. The police took into possession the jeep and the documents thereof. It was got mechanically examined. The site plan was prepared. Statements of the witnesses were recorded and after completing the investigation, the respondent was put on trial.

The respondent was charge-sheeted for the offences punishable under Sections 279, 337 and 338 of the Indian Penal Code. He pleaded not guilty and claimed trial.

The prosecution examined seven witnesses to prove its case. The respondent was also examined under Section 313 of the Code of Criminal Procedure. He has denied the circumstances put to him but the defense which surfaced in the cross-examination of the witnesses of the prosecution was that the said Amarjit Singh suddenly crossed the road which caused the accident.

No defense evidence was led. Appearing as PW3, Amarjit Singh has given a different version which was initially set up by the prosecution. According to him, he was standing on the gate near his house and in the meantime, the jeep in question came from the other side in a high speed and caused the accident. Jaishi Ram (PW4) complainant has also made the similar statement and denied the defense in his cross-examination that while crossing the road by Amarjit Singh, the accident had taken place. Learned trial Court took note of all this and while disbelieving the prosecution witnesses held that it cannot be said with certainty that the accident occurred due to the negligent driving of the respondent. Thus, the benefit of doubt was given to the respondent as such, he was acquitted.

On reconsideration of the matter I have also found that the view taken by the learned trial Court was just and reasonable. In fact, Amarjit Singh (PW3) had darted before the moving vehicle and his story that he was standing near the gate is wrong. The site plan prepared by the Investigating Officer no where shows that there was any gate in and around the place where the accident had taken place. This improvement made by the complainant and the injured goes directly to the root of the case and it cannot be said that the respondent was rash and negligent in driving his vehicle. Accordingly the benefit of doubt was correctly given. Therefore, appeal is dismissed. The respondent is discharged of the bail bonds entered upon by him at any time during the proceedings of the case.

(Surinder Singh)
Judge.

July 27, 2007.
(bm)